



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-1370 FAX (603) 271-1381



July 8, 2002

Kent's Service Station, Inc.
283 Elm Street
Milford, NH 03055

CERTIFIED MAIL (7099 3400 0003 0687 2462)
RETURN RECEIPT REQUESTED

Attn: Mr. Kent Sheldon

Re: Notice of Proposed Administrative Fine and Hearing No. AF 02-022

Dear Mr. Sheldon:

The New Hampshire Department of Environmental Services, Air Resources Division, is proposing that administrative fines totaling \$1,750 be imposed against Kent's Service Station, Inc. pursuant to RSA 125-C:15 for violations relating to the Stage II gasoline vapor recovery system.

You are required to respond to this notice. You have a right to a hearing to contest these allegations before the fine can be imposed. Please respond by August 8, 2002, using the enclosed form.

If you wish to have an informal meeting to discuss these issues, please contact the DES Legal Unit at (603) 271-6330. If you have any questions regarding this matter, please call Joseph Ritz at (603) 271-1391.

Sincerely,



Pamela G. Monroe
Compliance Bureau Administrator
Air Resources Division

Enclosure

cc: ✓ G. Rule, DES Legal Unit
R. Kurowski, EPA Region 1
R. Courage, Chairman of Selectmen, Town of Milford



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**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 02-022**

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Air Resources Division ("the Division") to Kent's Service Station, pursuant to RSA 125-C:15. The Division is proposing that fines totaling \$1,750 be imposed against Kent's Service Station for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Air Resources Division, is an administrative agency of the State of New Hampshire, having in its principal office at 6 Hazen Drive, Concord, NH.
2. Kent's Service Station is a corporation registered in the State of New Hampshire having a mailing address of 283 Elm Street, Milford, New Hampshire.

III. Summary of Facts and Law Supporting Claim

1. RSA 125-C authorizes the Department of Environmental Services ("DES") to regulate sources of air pollution. RSA 125-C:4 authorizes the Commissioner of DES to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted NH Admin. Rules Env-A 100 *et seq.*
2. RSA 125-C:15, I-b(b) authorizes the Commissioner to impose administrative fines of up to \$2,000 per offense for violations of any rule adopted pursuant to RSA 125-C.
3. Env-A 1205.19 and 1205.20 require gasoline-dispensing facilities in Hillsborough, Merrimack, Rockingham and Strafford counties that meet certain throughput criteria to install a California Air Resources Board ("CARB") certified Stage II vapor recovery system.
4. Kent's Service Station, Inc. is a gasoline facility doing business at 283 Elm Street, Milford, Hillsborough County, NH 03055, ("the Facility"). The Facility meets the throughput requirements specified in Env-A 1205.19.
5. On February 1, 1997 the Division issued Certificate of Compliance No. II-970035 ("the Certificate") to the Facility.
6. Env-A 1205.27 states that a Stage II certificate of compliance shall be valid for no more than three years.
7. Env-A 1205.06 requires the owner or operator of an applicable gasoline dispensing facility to maintain Stage I equipment as specified by the manufacturer and CARB.

8. Env-A 1205.24(a)(2) requires the owner or operator of an applicable gasoline dispensing facility to re-test a Stage II system within 90 days prior to the expiration date of any certification of compliance issued by the Division to the owner.
9. Env-A 1205.28 requires the owner or operator of an applicable gasoline dispensing facility to pay a non-refundable renewal fee of \$200 to the Division on or before the expiration date of the certificate of compliance.
10. Env-A 1205.23 requires the owner or operator of an applicable gasoline dispensing facility to notify the Division in writing at least 5 working days prior to any proposed testing of the date and time such testing will occur, and the name of the person who is responsible for such testing.
11. The Facility's Certificate expired on February 1, 2000.
12. On January 18, 2001, Division personnel contacted the Facility manager by telephone and notified him that the Stage II vapor recovery certification has expired February 1, 2000, that the equipment was required to be re-tested, and that a \$200 renewal fee was due along with the notification form. A blank notification was faxed to the Facility.
13. On August 14, 2001, the Division issued Letter of Deficiency No. ARD 2001-009 ("LOD") to the Facility for failing to conduct a Stage II vapor recovery system re-test within 90 days prior to the expiration date of the certification of compliance and failing to submit a notification form and \$200 renewal fee prior to the expiration of the Certificate.
14. The U.S. Postal Certified Mail Receipt dated August 16, 2001 confirmed the delivery of LOD #2001-009 to the Facility.
15. On December 17, 2001, Division personnel contacted the Facility by telephone and spoke with Kelly Sheldon, reminding her that the LOD had been issued August 14, 2001, and notifying her that the Facility's Stage II vapor recovery certification had expired, the vapor recovery equipment needed to be re-tested, and that a \$200 renewal fee was due along with the notification form. A blank notification form was faxed to the Facility.
16. On January 24, 2002, the Facility failed a Stage I and II site inspection, due to several Stage I discrepancies. Defects noted included a missing fill-adaptor cap gasket on the "regular" gasoline tank, a missing dry break cap on the vapor return connector, and a crushed manhole cover on the "super" gasoline tank. While the repair of these particular defects is not required by the manufacturer of CARB, the routine maintenance of the Stage I system is considered good management practice by DES.
17. On January 30, 2002, and again on February 8, 2002, Division personnel contacted the Facility and spoke with Kent Sheldon notifying him that he needed to arrange for a Stage II re-test.
18. To date, the Facility has not conducted a Stage II re-test.

IV. Violations Alleged and Proposed Administrative Fines

1. Kent's Service Station, Inc. has violated Env-A 1205.24(a)(2) by failing to re-test the Stage II vapor recovery system within 90 days prior to the expiration date of the Certificate. The Division has determined that Violation 1 is a major deviation from the requirements with moderate potential for harm. RSA 125-C:15, I-b(b) specifies a fine range of between \$1,251 and \$1,750. The Division is seeking a fine of \$1,750 for this violation.

2. Kent's Service Station, Inc. has violated Env-A 1205.28(b) by failing to pay the \$200.00 renewal fee required on or before the expiration date of the Certificate. The Division has determined that Violation 2 is a minor deviation from the requirements with minor potential for harm. RSA 125-C:15, I-b(b) specifies a fine range of between \$100 and \$1,000. At this time, the Division is not seeking a fine for this violation.

The total fine being sought is \$1,750.

V. Required Response, Opportunity for Hearing

Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than August 8, 2002, using the enclosed colored form.

1. If Kent's Service Station would like to have a hearing, please sign the appearance section of the colored form and return it to the DES Legal Unit, as noted on the form. A Notice of Scheduled Hearing will be issued.
2. If Kent's Service Station chooses to waive the hearing and pay the proposed fine, please have the authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.
3. If Kent's Service Station wishes to discuss the possibility of settling the case, please have the authorized representative sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate Kent's Service Station's interest in settling. Kent's Service Station is not required to be represented by an attorney. If Kent's Service Station chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

VI. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Kent's Service Station committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the things sought to be proved is true.

If the Division proves that Kent's Service Station committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

- ❖ Pursuant to Env-C 601.09, the fine will be **reduced by 10%** for each of the circumstances listed below **that Kent's Service Station proves, by a preponderance of the evidence**, applies in this case:

The violation was a one-time or non-continuing violation, **and** Kent's Service Station did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Kent's Service Station did not benefit financially, whether directly or indirectly, from the violation.

At the time the violation was committed, Kent's Service Station was making a good faith effort to comply with the requirement that was violated.


3. Kent's Service Station has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to Kent's Service Station's case, which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that Kent's Service Station committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Kent's Service Station's opportunity to present testimony to present testimony and evidence that Kent's Service Station did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If Kent's Service Station has any evidence, such as photographs, business records or other documents, that Kershaw's Quick Stop believes show that Kent's Service Station did not commit the violation(s) or that otherwise supports Kent's Service Station position, Kent's Service Station should bring the evidence to the hearing. Kent's Service Station may also bring witnesses (other people) to the hearing to testify on Kent's Service Station's behalf.

If Kent's Service Station wishes to have an informal meeting to discuss the issues, Kent's Service Station must contact the DES Legal Unit at (603) 271-6330 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If Kent's Service Station has any questions about this matter, please contact the DES Legal Unit at (603) 271-6330.


Robert R. Scott
Chief Air Programs Manager
Air Resources Division

Enclosure

cc: Gretchen Rule, DES Legal Unit
Susan Alexant, DES Hearings and Rules Attorney
R. Kurowski, US EPA
R. Courage, Chairman Selectmen, Town of Milford
ARD Enforcement File